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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 TERRY R. MOSER,

10 Plaintiff,

11 v.

12 CLALLAM BAY CORRECTIONS
13 CENTER SUPERINTENDENT, et al.,

14 Defendants.

Case No. C11-5327BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

15 This matter comes before the Court on the Report and Recommendation (“R&R”) of
16 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 3), and Plaintiff
17 Terry R. Moser’s (“Moser”) objections to the R&R (Dkt. 4).

18 On May 2, 2011, Judge Creatura issued the R&R recommending that the Court deny
19 Moser’s motion to proceed in forma pauperis because Moser is improperly challenging the
20 loss of good time served in an action under 42 U.S.C. § 1983. Dkt. 3 at 1-2.

21 On May 11, 2011, Moser filed objections to the R&R. Dkt. 4. Moser requests that
22 the Court (1) dismiss his claim for the return of his good time and (2) allow his claim for
23 civil damages to proceed. *Id.* The Supreme Court, however, has held that there is no “cause
24 of action under § 1983 unless and until the conviction or sentence is reversed, expunged,
25 invalidated, or impugned by the grant of a writ of habeas corpus.” *Heck v. Humphrey*, 512
26 U.S. 477, 487 (1994). Moser has failed to show that the loss of good time and/or infraction
27 has been reversed, expunged, invalidated, or impugned.

28 ORDER – 1

1 Therefore, the Court finds that Moser's objections are without merit as is his request
2 to allow his claim for civil damages to proceed. The Court having considered the R&R,
3 Moser's objections, and the remaining record, does hereby find and order as follows:

- 4 (1) The R&R is **ADOPTED**;
- 5 (2) Moser's motion for leave to proceed in forma pauperis is **DENIED**; and
- 6 (3) This action is **DISMISSED without prejudice**.

7 DATED this 8th day of June, 2011.



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9 BENJAMIN H. SETTLE
10 United States District Judge
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